

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:15-CV-559-RJC-DCK**

ROUNDPOINT MORTGAGE SERVICING CORPORATION,

Plaintiff,

v.

FIVE BROTHERS MORTGAGE COMPANY SERVICES AND SECURING, INC.,

Defendant.

ORDER

THIS MATTER IS BEFORE THE COURT on Defendant's "Motion To Quash or in the alternative Motion For Protective Order" (Document No. 29) filed June 23, 2016. This motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and is ripe for disposition. Having carefully considered the motion and the record, the undersigned will deny the motion.

By its motion, Plaintiff Five Brothers Mortgage Company Services And Securing, Inc. ("Plaintiff" or "Five Brothers") seek to quash a subpoena duces tecum (Document No. 29-1) (the "Subpoena") issued to Jeffrey Bunda ("Bunda") of the Hutchens Law Firm. (Document No. 29).

The Subpoena commanded that on July 7, 2016, Mr. Bunda should

Produce any and all documents, correspondence and/or pleadings related to the following case: *Annette M. Hayes v. Roundpoint Mortgage Servicing Corporation, et. al.*, Case No. 1:13-cv-00880-CCE-JLW, in the United States District Court, Middle District of North Carolina (Durham Division).

(Document No. 29-1). Bunda and the Hutchens Law Firm were the attorneys of record for Five Brothers in Case No. 1:13-cv-00880-CCE-JLW (the “underlying lawsuit”). (Document No. 29, p.1).

Five Brothers contends that the Subpoena commands the production of pleadings that are equally available to Plaintiff Roundpoint Mortgage Servicing Corporation (“Plaintiff” or “Roundpoint”), and that it commands “overly broad” document production. (Document No. 29, p.2). In addition, Five Brothers argues that correspondence sought from the underlying lawsuit will include privileged communications. Id.

“Plaintiff’s Response...” (Document No. 30) was filed on July 8, 2016. Plaintiff Roundpoint first argues that Defendant Five Brothers’ failure to confer with Plaintiff before filing the instant motion is sufficient cause for denial. (Document No. 30, pp.1-2). Plaintiff also argues that Defendant is not entitled to seek a protective order for Bunda, and has failed to show that any of the requested documents are privileged. (Document No. 30).

Based on Defendant’s failure to abide by the Local Rules of this Court, as well as Plaintiff’s other arguments, the undersigned finds good cause to deny the pending motion. Defendant failed to satisfy the consultation requirement pursuant to Local Rule 7.1 (B), and failed to file a reply brief, or notice of intent not to reply, pursuant to Local Rule 7.1 (E). Moreover, recent correspondence with the undersigned’s staff suggests that at least some of the requested production has already been made by Mr. Bunda. As such, it is unclear whether any, or all, of the pending motion is now moot.

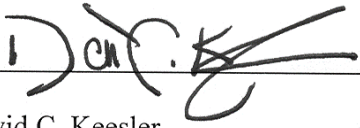
The motion will be denied without prejudice. If appropriate and necessary, Defendant may file a renewed motion that is consistent with the Local Rules of this Court. The Court will take Plaintiff’s request for attorney’s fees and costs under advisement. The undersigned agrees that

proper consultation might have eliminated, or at least narrowed, the issues in the pending motion. Defendant is respectfully advised that failure to abide by the “Pretrial Order And Case Management Plan” (Document No. 23) or the Local Rules may result in sanctions.

IT IS, THEREFORE, ORDERED that Defendant’s “Motion To Quash or in the alternative Motion For Protective Order” (Document No. 29) is **DENIED WITHOUT PREJUDICE**.

SO ORDERED.

Signed: August 8, 2016



David C. Keesler
United States Magistrate Judge

